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**From:** Parsons, Andrew [GRO]  
**Sent:** Wed 08/06/2016 4:26:00 PM (UTC)  
**To:** Anthony de Garr Robinson [GRO]  
**Cc:** Porter, Tom [GRO]; Loraine, Paul [GRO]  
**Subject:** RE: Jonathan Swift recommendations [BD-4A.FID26859284]

POL would like to use Deloitte given that they are up to speed. I'm nervous about using them because I have had no control over their instructions to date and the risk that we may then need to disclose those instructions.

Deloitte also has a long history of acting for POL on lots of other matters so that may bear on their credibility / independence.

My feeling is that we might be better keeping Deloitte in the background for investigative work and then pick a new expert as a witness.

Not really got a firm view yet.  
A

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**From:** Anthony de Garr Robinson [GRO]  
**Sent:** 08 June 2016 17:11  
**To:** Parsons, Andrew  
**Cc:** Porter, Tom; Loraine, Paul  
**Subject:** RE: Jonathan Swift recommendations [BD-4A.FID26859284]

Very good.

Fingers crossed that we get useful evidence from Fujitsu on (1) balancing transactions from Horizon inception and (2) Fujitsu's (non-) use of its privileged access rights to manipulate branch data from Horizon inception.

Might we be instructing Deloitte as our expert witness in due course? If so, this could affect the way we instruct them and how closely we work with them.

Tony

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**From:** Parsons, Andrew [GRO]  
**Sent:** 08 June 2016 17:04  
**To:** Anthony de Garr Robinson [GRO]  
**Cc:** Porter, Tom [GRO]; Loraine, Paul [GRO]  
**Subject:** RE: Jonathan Swift recommendations [BD-4A.FID26859284]

I think that POL will stump up the money to pay for the investigations so long as they see the value in doing so. We could tackle these three 3 lines of enquiries as follows:

1. Investigation into remote access / meddling with Horizon data (Bond Dickinson do this rather than Deloitte as its mainly making factual enquiries of FJ – this will save some money as BD is cheaper than Deloitte)
2. Investigating the suspense account (get this done by Deloitte as this is a proper accounting issue)
3. Reviewing the prosecutions where theft and false accounting were charged to confirm that there was sufficient evidence to support the theft charge. There are 9 Claimants in the litigation that fit this profile. We get BAQC to review these 9 cases (one is done already – Jo Hamilton). POL has already confirmed to me that they are happy to pay for this work.

This approach strikes me as proportionate but also should give us a high degree of assurance on these points. This is however subject to us keeping this work under review – if the litigation changes, the approach might change.

The above works largely duplicates what TP would have been doing. Add in the privilege risk and there are good grounds to shut down TP's work and just do the above work under the litigation umbrella.

A

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**From:** Anthony de Garr Robinson [GRO]  
**Sent:** 08 June 2016 16:47  
**To:** Parsons, Andrew  
**Cc:** Porter, Tom; Loraine, Paul  
**Subject:** RE: Jonathan Swift recommendations [BD-4A.FID26859284]

Quite right. What I meant to do with my second para was raise the question whether the present context – including Swift advising TP that these investigations be undertaken, TP naturally wanting to do what he has been advised to do etc – might mean that the client is less deterred by the cost and difficulties associated with these investigations than it might otherwise have been. If so, I would welcome it. From a pure litigation perspective, these investigations are highly desirable – the less evidence we have to rebut the suggestion that remote data tampering at our/Fujitsu's end could be responsible for inflicting any false losses on any claimants, the more awkward our position is on this difficult point (a point which provides a basis for allegations of deceit, for arguments that claims are not time-barred because of deliberate concealment and for arguments that the monthly accounts signed by Sub-Postmasters should not be given significant evidential weight).

Tony

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**From:** Parsons, Andrew [GRO]  
**Sent:** 08 June 2016 16:13  
**To:** Anthony de Garr Robinson [GRO]  
**Cc:** Porter, Tom [GRO]; Loraine, Paul [GRO]

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**Subject:** RE: Jonathan Swift recommendations [BD-4A.FID26859284]

Tony

We can only say that we might cover the JSQC recommendations through the litigation process but this will depend on how the litigation process goes. POL will just have to accept that risk – the work is either required for the litigation or it is not. We can't artificially squeeze work under the litigation umbrella just to cover off a political issue (or at least that is my view anyway).

The critical point is preserving privilege and the risk of TP doing further potentially unprivileged work. This alone strikes me as a good enough reason to shut TP down.

A

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**From:** Anthony de Garr Robinson; [GRO]  
**Sent:** 08 June 2016 15:19  
**To:** Parsons, Andrew  
**Cc:** Porter, Tom; Loraine, Paul  
**Subject:** RE: Jonathan Swift recommendations [BD-4A.FID26859284]

Thanks for this, Andy.

I'm not here to provide political cover, but I am concerned that the client should protect its interests as a defendant to this substantial piece of litigation. As you know from our discussion yesterday, the consideration which seems to me to be overriding is the privilege point, numbered 2 in your list of reasons. Your point numbered 3 involves some murky questions to which I don't have an immediate answer (remember all those difficult cases in Three Rivers regarding the Bank of England's inquiry into the BCCI scandal?), but I strongly suspect that the factual investigations we are talking about would not be the subject of any legal advice privilege and so would not be privileged in his hands in any event. But is that something we even need to consider – even if they were privileged, what would be the point of undertaking dual investigations into the same things anyway?

All this assumes that we will be carrying out the recommended investigations. But what we don't? Yesterday, you suggested that the litigation team may be instructed not to do a full investigation of the remote access or suspense account points because the cost is disproportionate in the context of the claims being brought. If so, where would this leave TP - back at square one? Putting the point another way, if our advice is that he should not do the investigations he was advised to do because this is something the litigators should do, and if it is then decided that the litigators will not do the investigation he was advised to do, would he then have to do them himself, or instruct us to do them, after all?

Tony

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**From:** Parsons, Andrew <[REDACTED]>  
**Sent:** 08 June 2016 14:42  
**To:** Anthony de Garr Robinson <[REDACTED]>  
**Cc:** Porter, Tom <[REDACTED]>; Loraine, Paul <[REDACTED]>  
**Subject:** Jonathan Swift recommendations [BD-4A.FID26859284]

Tony

I met with the POL litigation steering group yesterday. Their approach to the JSQC's recommendations has shifted slightly.

Tim Parker, POL's chairman, feels that he has made a commitment to Baroness Neville Rolfe (Minister at BIS) to follow through on the JSQC's recommendations unless he is presented with a persuasive case not to do so.

POL are therefore looking to us (and quite frankly you with your magic QC seal!) to give them some reasons for why Tim completing the JSQC recommendations would be ill-advised.

Just to recap, the recommendations we are talking about are:

1. Investigation into remote access / meddling with Horizon data (initially it was proposed that this was done by Deloitte)
2. Investigating the suspense account (again to be done by Deloitte)
3. Reviewing the prosecutions where theft and false accounting were charged to confirm that there was sufficient evidence to support the theft charge (Brian Altman's review)

My view is that these three recommendations plainly overlap with issues in the litigation. I can immediately see three reasons why Tim should not "conduct" the above investigations:

1. We, the litigation team, will need to investigate these points (in some form) in any event. We will probably need to do this on a different timetable to Tim (we having a degree of time pressure; Tim under less time pressure). We will also probably require a more robust investigation given that these points could be tested in Court. Two parallel reviews would be wasteful and could cause unknown complications should they reach contradictory results.
2. If these investigations are conducted by Tim there is a greater risk that this work is not privileged (the investigations not being conducted for the purposes of litigation but for some other purpose). It would be much safer for these investigations to be conducted as part of the litigation.
3. Even if the risk in 2 above could be guarded against (say by classing it as part of the JSQC's ongoing advice to TP – questionable???), I cannot see how TP could disclose the results of these investigations to BIS without a risk of waiving privilege (particularly where there is a possibility that BNR may then speak to James Arbuthnot or POL/BIS could be subject to a Freedom of Information request).

If we can give POL a piece of advice that says TP should stop any further work, TP would then feel empowered to say to BIS that, on the basis of legal advice, he is ceasing his review. I'm conscious that this feels somewhat unpleasant in that we are being asked to provide political cover for TP. However, putting aside the political background, shutting down TP's review is, in my view, still the right thing to do.

This will definitely come up at the Con tomorrow. If you want to discuss, please feel free to call.

Kind regards  
Andy

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